

7226

W. H. Holmes

THE
RIGHTS and IMMUNITIES
OF THE
ISLAND of GUERNSEY.

21

3 11 3

RIGHTS OF IMMUNITIES



ISLAND OF GUERNSEY

THE
RIGHTS AND IMMUNITIES
OF THE
ISLAND OF GUERNSEY,

Most humbly submitted to the
CONSIDERATION OF GOVERNMENT;

IN A
S P E E C H

OF ONE OF THE
MAGISTRATES of that ISLAND
to the ROYAL COURT there.

SHEWING,

The RUIN and DISTRESS the SUBVERSION of
their PRIVILEGES brings on that ISLAND; the
Prejudice it is of to GREAT BRITAIN; and the
Advantages that result therefrom to FRANCE.

L O N D O N:
Printed in the Year M.DCC.LXXI.

RIGHTS AND IMMUNITIES

ISLAND OF GUERNSEY

CONSIDERATION OF GOVERNMENT



MAGISTRAL OF THE ISLAND

TO THE ROYAL COURT

THE NEWING

THE RUIN AND DISTRESS OF THE ISLAND
THEIR PRESENT STATE
PROPOSED TO BE OF GREAT SERVICE
ADVANTAGE TO THE ISLAND

LONDON

Printed by J. G. M. L. L.

P R E F A C E.

IN order to understand rightly the following Discourse, it may not be improper to give some account of the Island of Guernsey, its government, and the particular circumstances which gave occasion to it.

Guernsey is a parcel of the Duchy of Normandy, and consequently a remain of the ancient patrimonial inheritance of our most gracious Sovereign from his royal progenitor William the Conqueror. Thence the inhabitants of that and the adjacent islands have not only to boast that they are the most ancient of his Majesty's subjects, but that they are on the side of the conquerors and not of the conquered. From those circumstances those islands had not alone preserved their original government and immunities, but having been early admitted by charters to all the rights of the English nation, they had hitherto continued undisturbed in the possession of those singular blessings.

ii P R E F A C E.

In regard to their government, that of Guernsey is administered by the Governor and the Royal Court, except on emergent occasions, when the States are convened for their advice, and for the raising of money which they have the sole right of voting. They are composed of,

1. The Bailiff, 12 Jurats of the Royal Court, and the King's Procureur, } 14
2. The rectors of parishes, whereof } 8
four parishes have but two rectors, }
3. The representatives of the parishes, being 2 Constables, and 12 duzeniers to each, except the Town and Vale parishes, which have the former 20, and the latter 16 duzeniers, } 152

Members constituting the States 174

The Bailiff who presides is appointed by the king, by patent under the great seal, during pleasure. The Jurats, tho' formerly chosen by the people for life, are now chosen by the States also for life. These constitute, separated from the States, the Royal Court of Guernsey, and to them, after taking a most solemn oath,

P R E F A C E. ii

oath, is committed the sacred trust of protecting and preserving its inhabitants in their religious and civil rights, making political ordinances, administering of justice, and passing judgment in all criminal and capital offences.

The king's Procureur, who is appointed by the king by warrant, officiates much in the same manner as the Attorney-General in England, and enters actions *ex officio*, in matters where the king or the police are concerned. There is also a Contrôler or Solicitor-General, but he has no vote in the States.

The constables, who are annual, and the duzeniers, who are for life, are chosen by their own parishioners bearing taxes; and besides their right of sitting and voting in the assembly of the States, form, under the name of the Assembly of the Duzen, in which one of the constables presides, the common-council of each parish, assessing taxes, and exercising many other functions, within their respective parishes.

The governor, to whom the military

government of the island is committed, has a deliberative voice in the States, but has no vote; and the Royal Court having fixed a Day for the meeting of the States, they are convened by writs from the Bailiff.

Under this government those people, having no immediate dependance but from their Sovereign, who is the source of their legislation, had for ages lived happy, loyal, and faithful. But here is the ground of their present grievances: In the year 1767, after the redemption of the rights in the Isle of Mann, by Government, for the placing of Custom-house officers therein, it was determined not to *redeem* but to *suppress* the rights and immunities of Guernsey and Jersey, for a like establishment of Custom-house officers in those islands. The States of Guernsey thereupon taking the alarm, sent over a deputy: and the matter being heard before the right honourable the Lords of the Privy Council, was over-ruled. In consequence, a *scheme* for Custom-house officers, with extensive powers and regulations, was approved of at the Treasury, and directed by an order of Council of the 17th of February,

P R E F A C E. v

bruary, 1767, to be observed both in Jersey and Guernsey. On receipt of that order, and the arrival of the officers at Guernsey, the Royal Court suspending the carrying it into execution, the States sent over another deputy, who had with him their original *charters* under the great seal, such as they were granted with the assent and authority of Parliament. The former deputy, it appeared, had rested the cause not on the charters, but on another basis. The second deputy presented in consequence a petition of the said States to the right honourable the Lords of the Council, for another hearing; but it was dismissed by an order of the 9th of October, 1767, for reason expressed therein, that the States of that island had already been heard, (meaning the hearing of the 17th of February, 1767, in which the charters were not used) and the Bailiff and Jurats of the Royal Court were thereby enjoined to carry the whole into execution, as they would answer the contrary at their peril. This order was transmitted to Guernsey, and after strong debates among the Magistrates in the Royal Court, whether they could, consistently with their oath,

oath,

vi P R E F A C E.

oath, carry into execution regulations so evidently destructive and subversive of the rights and liberties of the island, the majority finally determined for complying, as a motive to future redress, and in that view made a reserve in their act, in the nature of a protest.

Some time after, one *James Major* presented a memorial to the right honourable the Lords of the Treasury, the contents of which has not transpired; in consequence of which, he was by an order of Council of the 16th of December, 1768, (obtained *ex parte*) appointed to the command of a cutter to act in Guernsey, with the like powers as had been granted to the officers in the order of the 17th of February, 1767. But the Royal Court suspended the execution of this order, and took that occasion to present their own humble petition thereupon to their Lordships, but it was disregarded; for *Major*, it seems, having at the same time complained of the Court's delay, and falsely and maliciously represented that he had received unjust and cruel treatment in the execution of his office, he was, notwithstanding the fallacy

P R E F A C E. vii

fallacy of this complaint, instead of a cutter, appointed to the further command of a schooner of fourteen guns, four or five boats, and forty men armed; and the Bailiff and Jurats were, by an order dated the 13th of March, 1769, peremptorily ordered to carry the former into execution, and to swear him, *Major*, and his mates, as they would answer the contrary at their peril. This it was which gave occasion to the following Speech. The end proposed by it was, by giving a just idea of the nature, 1st, Of the native and charter rights of that island; 2dly, Of the oath of its magistrates; and, 3dly, Of the powers granted to *Major*, and other Custom-house officers, to convince the Court of the obligation they were under of making one effort more, and not to temporize, as they had done on the former occasion, in support of their rights and immunities, by an humble petition to the throne.

Such is the form of the government of Guernsey, and such were the motives which occasioned the annexed performance. The present intention in making it public, is a design to remove the

national prejudice, that the privileges of those islands are incompatible with the interest of Great-Britain ; it is with the hope, that the perusal of these sheets will be convincing of the advantages that result to France from the depression of the inhabitants of those islands ; it is with a view of fixing the rights of a people, who at all times have distinguished themselves by their loyalty and attachment to the English crown. This publication has indeed been put off above a year, in expectation that if the differences in England had subsided, it might have received a more candid reception. But Roscoff, and the other French ports in their neighbourhood, receiving daily new acquisitions of trade and wealth, to their manifest prejudice, as well as of Great-Britain and Ireland, it has been thought adviseable not to delay it any longer.

A SPEECH,

A

S P E E C H, &c.

G E N T L E M E N,

TH E question now before us is undoubtedly of the utmost importance not only to this island, but to ourselves as magistrates, and deserving our most serious consideration. It is therefore our duty to examine it well, and to weigh it with all its consequences, before we take a resolution. On the one hand, we have been *sworn* to keep, preserve, and maintain the people of this Isle in their rights, liberties, and privileges; and on the other, we are *enjoined* by his Majesty's late orders in Council, to swear *Major* and his mates, and to *admit* thereby in this country a *system* of Custom-house officers, with extensive *powers*, utterly *unknown* to our constitution, and altogether *subversive* of our most essential rights and immunities.

Such is the present difficult predicament in which we find ourselves! Yet are we not, I hope, without remedy. We, no doubt, owe all

B o b e d i e n c e

obedience to his Majesty's orders, and those of his most honourable Privy Council, and we are not to suspend the effects of them without good reasons; but, Gentlemen, his Majesty is too good, too just, and too pious a Prince, and the Lords of Council too reasonable, to require any thing from us repugnant to our oath, or that could wound our consciences, and fill our minds with terrors: we therefore must be found justifiable under the present circumstances, in making to his Majesty, previous to any other measure, an humble representation upon the nature of our rights, liberties, and privileges; on that of our oath; and on that of the extraordinary powers lately granted to *Major*, and other Custom-house Officers.

As to our rights, liberties, and privileges, you know, Gentlemen, they are of *two sorts*: Those which have been transmitted to us by our ancestors before the Conquest; and those which we enjoy in virtue of our charters, by the grace and favour of his Majesty's august progenitors, and their parliaments. The former regard us as *ancient subjects of Normandy*; and the latter as *English subjects*.

This distinction of our privileges is so real and notorious, that although we have been under the same sovereigns with England ever since

since the Conquest, yet it was not till the reign of William and Mary that we took any share in the wars which England waged with its neighbours; and our records, as well as those of Jersey, furnish many examples of French vessels, taken *in time of war* in our roads and ports by the English, being ordered *to be released* by the English government; and it was not till the reign of Elizabeth that we were separated from the Diocese of Coutance, and united to that of Winchester,

It is then very evident from these instances, that we made a distinct and separate state from England, though under the same sovereign; and consequently that we had laws, liberties, and privileges peculiar to ourselves as *Norman* subjects. But it may be asked, Did not this alteration in our situation supersede all distinctions between us and England? To this I answer, That our sovereigns, as dukes of Normandy, had a prerogative inherent in themselves to make war or peace, or to annex any particular churches to any diocese they pleased, of which I could produce irrefragable proof; therefore the exertion of this prerogative was no breach of any of our privileges; we have ever remained in the full possession of them, and of our laws, liberties, and antient customs; and our government has continued on its old footing,

footing, separate and distinct from that of England and Great Britain.

I would not, however, from this distinction, have, Gentlemen, to infer, that I mean to disclaim the authority of the British Parliament over these islands. How far, or in what cases it may extend to us, is a question which I believe has never been canvassed. What we know is, that no acts of parliament are at all considered or attended to in these islands, although especially named therein, unless they are transmitted to us with an order of Council, to give them weight; and that even these acts, these orders, respectable as they are, have no force of law here, *until they have been verified by the Royal Court, and registered on our records.*

Such is, and such has been *the form* of our constitution; a form, Gentlemen, well deserving our attention, as furnishing a peremptory proof, if not of our independence of the British legislature, of the *Royal Courts* making part of the legislature of this island. No privilege indeed could be more reasonable. Do we derive it from our charters, or the government of England? No; we hold it from Normandy, and its antient government, such as it has been maintained in these islands until now. Do we not see even in France, that country of
despotism,

despotism, the use the parliaments of Normandy, Britany, and others make of this right of verification and registering? Do they not use it to suspend the effect of their king's edicts, when injurious to their province, or contrary to their privileges, and as a sure means to be heard in their humble remonstrances?

We have a recent and striking instance of this, in the parliament of Britany, whose members have suffered exile, and a thousand other hardships, rather than verify and register edicts ruinous to their province, and subversive of their privileges. Even the king's *Procureur*, Monsieur De Chalotais, whose name will be transmitted to posterity with those of the greatest men, refused to give his conclusions upon those edicts. Though a Crown-officer, he yet remained firm in not giving his sanction to edicts which appeared to him equally illegal and pernicious; yes, sooner than wound his conscience, or concur in infringing the rights of a people, he submitted to be degraded from his office, and to endure the severities of a long and rigorous imprisonment. But how pleasing and flattering is the present scene! We see him, we see them all reinstated † and replaced in their several employments; and

† There was such an order, but it was rendered ineffectual by the intrigues of the Duke d'Aguillon.

their king, by this signal act of justice, bearing the most honourable testimony to the candor and uprightness of their proceedings.

I cite these examples, in order to give a true notion of the nature of this valuable part of our ancient privileges, and to justify our conduct, should we follow the design of so salutary an establishment, as that of verification and registering. Certain it is, that this form of our government is not the effect of chance, or of our invention ; we see it blended with their system on the Continent ; it is of the essence of our constitution ; and so cemented and linked with it, that you cannot abrogate the one, without destroying the other. 'Tis by this alone that we make part of the legislature of this island, since our concurrence is necessary to give force and authority to his Majesty's orders, or those of the Lords of Council. 'Tis by this alone, that we can legally, in compliance with our oath of office, keep and maintain the inhabitants of this isle in their rights, liberties, privileges, and ancient usages. This it is that makes the excellence of our constitution, not obliging our Magistrates to take an oath, without preserving to them the legal means of fulfilling and observing it : In a word, this is the *palladium* of our liberties, since it is (I speak it in all submission and respect) the only barrier between us and despotism,

I pro;

I proceed now, Gentlemen, to speak of the rights, liberties, and privileges, granted to us by our charters. The oldest that is preserved entire under the great seal in our records, is, of Henry VI. and contains an Inspecimus of the charters of Edward III. Richard II. and Henry IV. and V. and begins thus: "Henry, "by the grace of God, King of England, "France, and Lord of Ireland: To all those "to whom these presents shall come, greeting. "We have seen the letters patent of the Lord "Richard, late King of England, the second "*after the Conquest*, made in these words: "Richard, by the grace of God, King of "England and France, and Lord of Ireland, "to all those to whom these letters patent shall "come, greeting.

"Know ye, that we, considering *the good* "*behaviour, and good fidelity*, which we have "found from day to day in our liege and faithful nations and communities of our islands "of Guernesey, Jersey, Serke, and Aureneye, "have, of our special grace, granted for ourselves and our heirs, (as far as in us lies) *to* "*the said nations and communities*, that they, "and their heirs and successors, shall *for ever* "*be freed and acquitted* in all our cities, boroughs, markets, and trading towns, fairs, "mart towns, and other places, and harbours, "*within*

“ *within our kingdom of England, from all sorts*
 “ *of tolls, exactions, and customs, in the same*
 “ *manner as our faithful and liege are in our*
 “ *kingdom aforesaid ; provided, however, that*
 “ *our said nations and communities, and their*
 “ *heirs aforesaid, shall well and faithfully be-*
 “ *have themselves towards us, and our heirs*
 “ *aforesaid, for ever.*”

We were Norman subjects, and as such we enjoyed, *previous to such charters*, the rights and liberties of *Norman subjects* ; and by these charters we are received and admitted to the immunities and privileges of *the English*, which proves the distinction of privileges I have before pointed at. But this will farther more fully appear by Queen Elizabeth's charter, which begins thus : “ Elizabeth, by the grace of
 “ God, Queen of England, France, and Ire-
 “ land, Defender of the Faith, &c.

“ To all to whom these presents shall come,
 “ greeting. Whereas our loving and faithful
 “ liege subjects, *the Bailif and the Jurats* of our
 “ island of Guernsey, *and the other sojourners*
 “ in, and inhabitants of the said island, as well
 “ as of our islands of Aurenay, alias Alder-
 “ ney, and Sark, *within the Dutchy of Nor-*
 “ *mandy*, and their predecessors have, *from*
 “ *time immemorial*, (beyond what the memory
 “ of

“ of man can reach) by virtue of several *char-*
 “ *ters, grants, confirmations, and most ample*
 “ *proofs and certificates of our illustrious pro-*
 “ *genitors and predecessors, the Kings of England,*
 “ *and Dukes of Normandy, and others, have*
 “ *used, enjoyed, and been in possession of*
 “ *very many rights, jurisdictions, privileges,*
 “ *immunities, liberties and franchises, freely,*
 “ *quietly, and without any infringement of the*
 “ *same, as well within the kingdom of Eng-*
 “ *land, as elsewhere within our dominions,*
 “ *and other places under our subjection, on*
 “ *this side of, or beyond the seas : By the aid*
 “ *and benefit of which grants, the islands,*
 “ *and the maritime places aforesaid, have stood*
 “ *out loyally, and continued unblameably, as well*
 “ *in our as our progenitors service, and have*
 “ *enjoyed and gone on in their free com-*
 “ *merce with merchants, both natives and*
 “ *aliens, as well in time of peace as in time of*
 “ *war ; and exercised and executed their du-*
 “ *ties in giving their decrees, and taking*
 “ *cognizance of all and every cause, quarrel,*
 “ *action, both civil and criminal, and capital*
 “ *pleas ; and the rights of jurisdiction they*
 “ *were vested with, to take into their confi-*
 “ *deration to decide, discuss, hear, and deter-*
 “ *mine, proceed in the premises, and keep*
 C “ *records*

“ records of their proceedings, according to
 “ the laws and customs practised of old, and
 “ approved in the said islands, and other places
 “ aforesaid.”

Every privilege described in this preamble, is conveyed and granted to these islands in the sequel of this charter ; and they are again confirmed in the subsequent charters of James I. Charles I. and Charles II. Now is not the neutrality therein asserted and acknowledged, in which France has heretofore acquiesced, and in consequence thereof suffered in war our ships to enter free into her ports, a peremptory proof of our making a distinct people from England ? Does it not account for what I have observed before, that we took no share in the wars England had with its neighbours, till the reign of William and Mary ? Is it not evident both from this, and our continuing, as we had hitherto done, in the undisputed possession of our liberties, laws, and usages, that we are a distinct government from that of England ? Is it then surprizing, if among these usages, we have retained that essential and necessary barrier between us and arbitrary power, the *publication and registering* of orders ?

The

The truth is, that our charters are perhaps the only ones in the world of their kind. Charters may be granted from a conqueror to his conquered subjects, or from any prince, for the end of encouraging the settling of colonies in new-discovered countries ; of forming corporations of towns or companies, or for any particular purposes of trade ; but our charters are granted us, not from our conquerors, but our own natural sovereigns, and to admit us to the rights and immunities of their once subjugated and conquered subjects the English.

But, Gentlemen, I have this important observation to make on these charters, in case a conqueror's right to have done this should be controverted, That they are confirmed by the parliaments of England. That of Henry VI. has these words : “ *De assensu Dominorum Spiritualium et Temporalium in parlamento nostro apud Westmonf. anno regni nostri primo existentium.*” And that of Queen Elizabeth concludes thus : “ *Per ipsam reginam, & de datâ predictâ, auctoritate parlamenti.*”

By these latter charters our rights, as ancient Norman subjects, and as English subjects, are then well established. The former, as I have before observed, we have a natural

right to ; the latter, we owe to the grace and favour of our sovereigns, and their parliaments. But it may be asked, May not the king and the parliament revoke and alter their grants, or even deprive a people of their antient and natural rights ? I do not presume to set bounds to his Majesty's authority, or that of his parliament ; but if the great God of Nature is himself circumscribed by his own eternal justice, why should not kings and parliaments be so ?

I know it is a maxim in England, That the parliament can do and undo at pleasure ; but, as I have just now observed, is not this power in the parliament to be subservient to its own justice ? If they repeal an act or charter relative to the people of England, the act is valid, because it is virtually the will of all the concerned. But is not our case very different ? Our sovereigns, and their parliaments, have granted us rights and immunities ; we have accepted of them ; we are willing to enjoy them ; we form a distinct government, and have no representatives : shall we then, under these circumstances, be stripped and deprived not only of them, but of our native and antient rights ? Would not such a proceeding be arbitrary, be destructive of public faith, and render

der all rights and charters illusory and precarious ? I hope, Gentlemen, for better things from the justice of our most gracious Sovereign, the Council, or his Parliament, and on that I found my proposal of an humble petition to his Majesty.

In England, they look on their Magna Charta as sacred and inviolable ; but how much more ought our native rights and charters to be so ? The English, the moment they were conquered, lost their liberties. It is true, Henry I. and Henry II. of their own free will, restored them by charter to some of the liberties they enjoyed under their Saxon princes. But was not Magna Charta extorted from king John ? And what rights could they ground on a charter granted in this manner, by a weak and a bad prince, who also resigned his kingdom to the Pope, and did homage for the same, if charters like ours ; charters that have the like royal and parliamentary sanctions ; charters that never were forfeited ; that have stood inviolate for so many ages, are at this time deemed baubles to be taken away and revocable at pleasure ? Yes, what permanency, if such a doctrine was admitted, could the English nation have in such their Magna Charta, or in their so much boasted Bill of Rights ?

But

But the English are too brave and too generous a people to suffer servitude, and what they value in themselves, they know how to esteem in others. They call their Liberties their Birth-right; with how much greater reason may we call our rights and immunities our Inheritance? Have we not acquired them by every title that gives property? By prescription; having possessed them for above Seven Hundred years: By succession; having been uninterruptedly transmitted to us by our forefathers, thro' so many ages: And by conveyance, by our charters, expressly granted to those ancestors for their loyal and courageous behaviour, and for the signal services which they rendered the crown of England, at the expence of life and fortune. If these things do not constitute a right, I wish to know what does; and if they do, can we have a better ground for an humble application to the throne?

Let us now, Gentlemen, examine the nature of the oath we have taken as magistrates, and magistrates chosen for life, by the free choice of a free people, whose representatives we are. The form of our oath is: "We
 " swear and promise, that by the truth and
 " faith that we owe to God, and upon the
 " peril and damnation of our souls, and on
 " the gospel that we touch with our right
 " hand,

" hand, that we will be true and loyal subjects
 " to the king, and *maintain the constitution of*
 " *this isle justly, and preserve and keep, with*
 " *all our power, the laws, liberties, customs,*
 " *and ancient usages of right practised and ac-*
 " *customed in this isle.*"

This oath and election of magistrates by
 the people are established and sanctified by
 the *constitutions of king John, previous to Magna*
Charta, and by the *Precept of Assize under*
Edward III. either of which may, with great
 propriety, be called *our Magna Charta*. Could
 any thing stronger be devised, as an inviolable
 fence to our laws, liberties, and privileges?
 In behalf of whom do we swear to keep and
 preserve this island in its laws, liberties, and
 customs, if it is not of the people of this
 island? and if it is, who besides can free us
 from the sacred obligation it lays us under?

This is indeed, Gentlemen, a very delicate
 point, and touches our consciences nearly;
 for when we have sworn to keep, preserve, and
 maintain, with all our power, the constitution
 of this isle, and its laws, liberties, and usages,
 was it understood that we should do it sword
 in hand? God forbid. Our constitution is
 built upon more just and rational principles.

We

We are the ministers of peace, of fidelity, and loyalty to our sovereign, and mesne judges between the king and his subjects; and the same authority that has stamp'd these characters on our office, has also appointed *those necessary forms* I have before mentioned, to give force and authority to any new law or regulation. If it was otherwise what a dismal plight should we be in? Any ambitious man might surprise from his Majesty, or the Lords of Council, any destructive order. It might be sent to a governor; and what security could we then have, I will not say for our privileges, but for our lives and fortunes? We then have an undoubted right to suspend the effects of the present orders, and to make our humble representations thereupon to his Majesty.

The next thing I propos'd to examine, was the powers granted to *Major* and the other Custom-house officers. They certainly are subversive of our constitution, repugnant to our charters and antient privileges, destructive to our trade and commerce, pregnant with ruin to this island, tending to make it desolate, *and to raise to importance* the small French ports around us, and ultimately rather hurtful than of service to the revenue. We were formidable to the French trade in war, having fitted
out

out in the last no less than seventy privateers ; but now the scene is changed, and no other prospect left us, than desolation to us, and prosperity to our enemies.

The recital of the order of December 16, 1768, will serve as a clue to give us a just idea of this matter. It concludes thus: " His Majesty, taking the same (a representation of the Lords Commissioners of the Treasury, and a memorial of *James Major*) into consideration, is pleased, with the advice of his Privy Council, to approve thereof, and to order, that the said *James Major*, and three of his Mates or Boatmen be, and they are hereby *authorised* to visit ships or vessels within the harbours and ports of Guernsey, Jersey, and the adjacent islands; and to make seizures of ships or goods subject to forfeiture, and *with the like powers* as the Officers already established in those Islands are invested, *as far as the same are consistent with the constitution of the said Islands, and the provisions of any British Act of Parliament which relates to them*; and the Right Hon. the Lords Commissioners of his Majesty's Treasury are to cause such directions to be given herein, as to them may appertain: And the Governors or Commanders in Chief,

D

" Bailiff,

“ Bailiff and Jurats, and all others his Majesty's Officers in the said Islands, for the time being, and all others whom it may concern, are likewise to take notice, and govern themselves accordingly.”

We flattered ourselves, that the limitation contained in that order, (as far as the same are consistent with the constitution of the said Island, and the provisions of any Act of Parliament which relate to them) gave us an opening for an humble petition to their Lordships, and we accordingly petitioned; but this petition has unhappily been unnoticed: And by the order of the 13th of March last, *upon a memorial of the Lords Commissioners of the Treasury*, setting forth, that the *Commissioners of the Customs* have informed them, that *James Major* had received *cruel and unjust* treatment in the execution of his office, and that the Bailiff and Jurats of this Royal Court have delayed paying obedience to the former order of the 16th of December; we are now peremptorily ordered and required to publish, register, and carry the same into due and effectual execution, and also to administer *the oath of office* to the respective Officers therein-mentioned, *as we will answer the contrary at our peril.*

e
Now,

Now, Gentlemen, I most humbly conceive, that those new authorities in this Country granted to the Lords of the Treasury, and the Commissioners of the Customs, are such an innovation, as is destructive of our ancient constitution; they are, indeed, so foreign to our Government, that it has provided no method whatever to establish them; nor do we know any other Legislative than what flows immediately from his Majesty and Council; so that I deem it, in all submission, impossible for us, without subverting every thing we hold most sacred, to give force of law to any directions that may be sent us by the Lords of the Treasury, or to any warrants granted by the Commissioners of the Customs.

I do indeed most sincerely wish, that we could find out some expedient to reconcile these difficulties. But the motives by which we act will, I hope, be thought so sacred, as to free us from the imputation of obstinacy. I then beg leave to proceed, by clearing up two things in those orders, that might otherwise be wrongly interpreted. First, in respect to what is said, that *Major* and his Mates are authorised *with the like powers* as the Officers already established in these islands: Secondly,

in that we are ordered and required to administer *the oath of office* to those respective Officers, as we will answer the contrary at our peril. Might it not be inferred from this, that we have a fixed and constitutional system of Custom-house Officers in these islands? Nevertheless, have we so much as a form of oath or commission for those people? The Commissioners of the Customs have indeed remedied this defect; they have supplied their Officers with both; they have prescribed, and they expect we must obey. I indeed wish we could, as those Gentlemen are very good worthy men, and for whom I have the highest esteem.

But how derogatory would this be to our national constitution, and consequently to our duty? Does not our Precept of Assise, our Magna Charta, *prescribe*, that every Magistrate, every Governor, every Officer acting in this Island, *shall*, previous to their doing the least function in their office, *first* exhibit their respective Commissions before the Bailiff and Jurats, to be by them published and registered; and that such Officers *shall, secondly*, be by them sworn, that they will rightly and faithfully keep and maintain the inhabitants of this Isle in their Liberties, Usages, and
ancient

ancient Customs? And has not this essential part of our constitution been so inviolably kept up, that there is not one instance on record, of its having been dispensed with?

Our Governors, indeed, who are always great men, residing in England, take the oath before the Lords of Council; but then this Court has never published or registered their patents, though under the Great Seal, before they had a certificate from their Lordships, attesting that such oath had been taken before them. If, then, this Court has ever withheld its concurrence from every act, every authority, even from patents under the Great Seal, that did not secure the Liberties and Privileges of this island; can we, consistently with our own oath; can we, without perjury, give our sanction to warrants from the Commissioners of the Customs, and the form of an oath prescribed by them? And what oath? what warrants? Warrants that in their very origin are incompatible with our constitution; and an oath that violates our fundamental laws, and makes it a duty in the Officers that take it, to despise and subvert our most essential Rights and Immunities.

As

As to the powers mentioned in those orders, they refer to another order of Council of February 13, 1767. This order alone is the origin and foundation of this establishment of Custom-house Officers. They are thereby *to be permitted freely* to go on board, and visit all ships and vessels, as well outward as inward-bound. They are to take account of their loadings; they are to examine, if there be on board any ships bound for Great Britain or Ireland, or any land, island, &c. belonging, or that shall belong to his Majesty, any East-India wrought silks, or other East-India goods, prohibited to be carried from these Islands to Great Britain or Ireland, in order that the same may be seized by the said Officers. They are likewise to examine, if there be *any wool in any ships from Great-Britain or Ireland bound to foreign parts*; and to examine, if there be on board any ships bound to these islands, any wool other than what is allowed by Parliament, or any *enumerated plantation goods*, or any goods of the produce or manufacture of the East-Indies, or other places beyond the Cape of Good-Hope, imported from any place but the kingdom of Great-Britain, in order that the same may also *be seized* by the said Officers. They are likewise to examine, if there be any *corn, or*
British

British or Irish linens, arriving from Great-Britain, for which the bounty has been, or is to be paid; or any wine or coals on board such ships which have been entered outwards from Great-Britain, for the British plantations in America, in order that the same may also be seised by the said Officers.

They are to see that no Master or Purser of any ship or vessel bound from these islands to any port or place in Great-Britain or Ireland, is to proceed on his voyage before such Master, or Purser, shall have entered *into bond* to his Majesty, with one or more sufficient sureties, in the value of the goods, with condition to produce a certificate from the proper Officer of the Customs of some port of Great-Britain and Ireland, that the said goods were there duly landed; and if such certificate be not produced within six months, *the bond to be forfeited.*

They are likewise to see, that no Master or Purser of any ship bound from these islands, taking in any goods for foreign parts, shall proceed on his voyage before such Master, or other person, *shall have made oath* before the Bailiff and one Jurat, in the presence of the Register, or other Officers acting as such, that
such

such ship and cargo is not bound to Great-Britain or Ireland, but to some foreign part, specifying the same, under penalty of fifty pounds.

They are to see that no brandies or spirits be imported to or from these islands, in casks less than sixty gallons, or in vessels under fifty tons burthen, upon pain of being forfeited. *The Register, or any other Officer, is to be present at the administering the oath, to the certificates directed to be granted by an Act of the third year of his present Majesty's reign, (it should be the third of George the First) whereby goods of the growth, produce, or manufacture of these Islands, are to pass custom-free; and the said Officer, so present, is to be permitted and authorised to ask proper questions of the persons taking such oath, and to attest the certificates granted by the Governor for such goods.*

Such then is the nature of those powers granted to the Custom-house Officers; such the nature of our oath of office; and such the nature of our native and charter rights. By comparing these together, we shall be enabled to judge whether we can, consistently with those rights, consistently with our oath, give our sanction to those powers. But what must
amaze

amaze every body who knows any thing of the trade of this island, is to see so many frauds accumulated together, and placed to the account of this island. Is it not strange to suppose, that wool should be brought to these islands from Great Britain or Ireland, bound to foreign parts? And if it was so, who commits the fraud but the shippers in Great Britain or Ireland? May not the same be said for enumerated plantation goods, or the articles of corn, British or Irish linnens, or wines, or coals, as have been entered outwards from Great Britain for the British plantations? I could indeed affirm, that there is no such traffic or pretended frauds carried on in this island in those articles; but if there were, how are we culpable? Reference is indeed had to acts of parliament to authorize these powers, but they are acts of parliament *that do not regard us*; acts of parliament that are no laws here. Those acts are, in fact, merely confined to Great Britain and Ireland, or the plantations, to prevent the frauds in their origin; they oblige the shippers there to give bonds to return certificates, subjecting them to fines and penalties for different trespasses. If any transgress, it is then at their peril. But what have we to do with it? Yet it seems we must lose our privileges, because there is a possibility

E

lity

lity that such traffic may be carried on from those countries. Would this be justice?

As to any trade or traffic carried on to Great Britain, or Ireland, with goods bought in these islands, I can not find out neither, why we must be punished for the transgression of others. If we have a native and legal right, and a right which I never heard denied in any country, to sell our goods to such purchasers as we like, must we be answerable for any ill use that may be made of such goods? Must the whole community be involved in any criminal imputation that can be justly charged but upon a few, and most of those not even of that community? Such, in reality, are for the most part the persons who buy goods here to smuggle to England; but certainly no fraud is committed here by us, when we sell our goods. Shall a cutler be debarred the liberty of selling a sword or a dagger before he knows what is to be done with them, because they may be employed to bad purposes? This would be a terrible hardship indeed. We must grant that every illicit trade is an evil to be checked, but the greater evil would be to effect it by injustice to the innocent.

I have

I have already read the preamble of Queen Elizabeth's charter; but it was merely to give a general notion of the nature of our privileges; but here permit me to recite the 5th article of that charter, in opposition to the powers granted the Custom-house officers, viz. "And whereas *some other* privileges, jurisdictions, immunities, liberties, and franchises were graciously given, granted, and confirmed from time immemorial, (as far as the memory of men can reach unto) by our progenitors and predecessors, formerly kings of England, and dukes of Normandy, and others, to the said islanders; have been used and observed *constantly* in the said islands, and other maritime places; one whereof is, that *in time of war* the merchants of all nations, whether aliens, born in or out of the said islands, both friends and enemies, could and might freely, lawfully, without danger or punishment, frequent the said islands, and maritime places, with their ships, merchandizes, and goods, as well to avoid storms, as there to conclude or finish their lawful business, come to, resort unto, go to and fro, and frequent the same, and there exercise their *free commerce, trade, and traffic*, and afterwards securely, and without danger, remain there, and depart away from

E 2

"thence,

“ thence, and return into the same, when
 “ they think fit, *without any harm, molestation,*
 “ *or hostility whatsoever in their goods, mer-*
 “ *chandises, or persons*; and this not only
 “ within the said islands, and maritime places,
 “ and all around the same, but likewise at
 “ *such spaces and distances from the islands as*
 “ *the sight of man goes to, or the eye of man*
 “ reaches: *We, by virtue of our royal authority,*
 “ *do for ourselves, our heirs, and successors re-*
 “ *new, reiterate, confirm, and graciously grant*
 “ *the same immunities, impunities, liberties, and*
 “ *privileges just now mentioned to the said bailiff*
 “ *and jurats, merchants, and others, whether*
 “ they are in war or amity with us; and to
 “ all others inhabitants, and aliens, and so-
 “ journers aforesaid in the said island, *in as*
 “ *ample form and manner as heretofore they*
 “ have used and enjoyed the same. In order
 “ therefore to prevent any violation or infraction
 “ of this our grant, concession, and confirma-
 “ tion, or any thing therein contained in any
 “ manner whatsoever, We declare and give
 “ this *warning* by these presents to all our
 “ officers and subjects, (*which warning we*
 “ *order to be published in all parts of our king-*
 “ *dom of England, and throughout all our realms*
 “ *and dominions under our obedience, wherefo-*
 “ ever they lie, or are situated) That if any
 “ one

“ one of our said officers and subjects shall *be*
 “ *so rash* as to presume to transgress, or en-
 “ deavour to transgress these our strict orders
 “ and commands, We order and decree, (as
 “ far as in us lies) that he shall be *severely*
 “ *punished* for his audacious contempt of our
 “ royal power, and disobedience to our laws;
 “ and shall be *compelled* to make a full resti-
 “ tution and satisfaction of all costs, interests,
 “ and damages, and prosecuted by all due
 “ process and forms of law for the same.”

I own the motives of government for the
 present measures are plausible and popular;
 every scheme to prevent the smuggling of
 goods to England must always be so. But is
 there no other method to attain this end,
 than by the overthrow of our constitution,
 and the ruin of our rights, liberties, and
 privileges? If it was so, though I hope to
 prove the *unfitness* of these measures, natural
 justice must certainly suggest, that such va-
 luable privileges ought to be redeemed and
 compensated. It is what was done with re-
 spect to the Isle of Mann; and what was done
 to the owners of the heretable jurisdictions in
 Scotland.

Now,

Now, Gentlemen, the rights in Mann were held by royal charter, confirmed by parliament; and that island was acknowledged to be feudatory to the crown of England; and the jurisdictions in Scotland were heretable, independent of England. By this we may draw a just inference between those rights and our own; but in my humble opinion, we exist with more dignity, and with much better titles.

We are part of the antient Dutchy of Normandy; and Sir Edward Coke affirms, that the possession of these islands is a good seisin to England for the whole dutchy. We then represent the whole dukedom; and this right has been preserved to England by the virtue and valour of our ancestors, of which our charters give a very full and ample testimony. France had conquered that whole province; our ancestors were naturally attached to it, from national affection, vicinity, affinity of language, motives of safety and interest; yet they, our loyal and brave ancestors, sacrificed every worldly consideration, and exposed themselves to a thousand perils and losses, rather than yield to a foreign dominion, or submit to any other than their legitimate and natural
sovereigns,

sovereigns, tho' kings of England, yet dukes of Normandy. Such, then, is our relation to England, not as conquered or feudatory subjects, but as subjects of the conqueror.

If by the revolutions of time, and the extension of commerce, the rights and privileges of these islands should now be thought, with or without reason, prejudicial to the revenues of England; it is our misfortune, but certainly no legal cause to authorise our being stripped of them, especially having never exercised them beyond their just extent; and though I have spoke of redemption and compensation, I have done it merely to exemplify how differently we are treated, and to elucidate the justice of the British government on other occasions, which has ever held as an inviolable maxim, that every act that affects private property for public convenience, is to be preceded by satisfaction to the party affected thereby. The precedents I have cited prove it beyond a doubt. As to us, we make no part of the community of England. We therefore exist a people distinct from them; therefore are we not, I hope, to be ruined from the mere motive of advantaging their revenues; therefore, I hope, have we a right to claim the sanction of those eternal principles

ples of justice, by which small states and republics have for ages been preserved in their independency ; and by which Hanover, tho' under the same sovereign, still remains independent of Great Britain.

Some inconsiderate prejudiced Englishmen may possibly laugh at our pretence of forming a distinct government from Great Britain. But either we do, or we do not. If we do not, we must be silent ; but if we do, shall might overcome right ? The question is certainly of so universal a concern (for what is our case to-day may be another's to-morrow) as to have deserved investigation. Though our sovereign is king of Great Britain, and the inferior title is swallowed up in the nobler, why should we be less his ducal subjects, or less entitled to the rights that quality may convey ? We have indeed great obligations to England ; but would not the claims of gratitude be carried beyond their just bounds, if it was expected, that for a supposed or real pecuniary advantage to Great Britain, we should give up our most sacred rights, and rights upon which our very existence as a people depends ?

I have

I have no doubt, however, but to make it appear, that the scheme of Custom-house officers in these islands, though ruinous to us, will also *rather hurt* than advantage the revenue. Let us then examine the fitness, or rather the unfitness of those measures to the end proposed. The intention of Government is to check and prevent the smuggling of goods to Great Britain and Ireland, and to advantage the revenue. The question then is, Will the fixing Custom-house officers in these islands answer those purposes? That the views of Government might be attained by such an establishment, must be granted, was our situation *similar* to that of the Isle of Mann. The Isle of Mann is situated between the three kingdoms, and has no neighbouring ports *whereto* the smugglers could *shift* their trade. The redeeming the rights of that island, was then unquestionably of great service in this respect; nevertheless it is amazing what prodigious quantities of goods have since that æra been smuggled to Ireland from the Isle of Rhé, and ports of France, and to Scotland from Gottenberg and Holland; so difficult it is, where duties are high, to curb and check that illicit practice and perverse spirit.

As to us, we can now speak from experience. It is now sixteen or eighteen months since the order of Council of the 13th of February, 1767, was carried into execution: and what has been the consequence? The neighbouring *port of Roscoff*, an unknown, an unfrequented port, the resort only of a few fishermen, has arisen upon our ruin, and now raises its head; so that from small hovels, it has now, in this short time, sundry good houses, and large warehouses, occupied by English, Scotch, Irish, and Guernsey merchants. These, on the one hand, give every incitement to the English and Irish smugglers to resort there; and on the other hand, *the French government*, ever attentive to catch at every national advantage, gives every encouragement to those merchants.

But for this I do not desire to be believed on my bare word. Here is, Gentlemen, *copy of a letter* that has been sent me from France, and which I believe few of you have seen. It is from the Chancellor of the Exchequer at Paris (*Intendant des Finances*) to the Intendant of the Generalty of Brest, in answer to one *the latter* had wrote him. It is dated at Paris the 5th of March, 1769, and is as follows: "I cannot express to you, Sir, how much your
" letter

“ letter of last month has given me pleasure,
 “ and I cannot but praise infinitely *the patriotic*
 “ *zeal* that has determined you to write it me.
 “ I occupy myself without intermission about
 “ the *important object* (the making Roscoff a
 “ free port) that you treat therein. There are
 “ some difficulties in regard to the preserving
 “ the rights of the farm, and the consumption
 “ of the *brandies of our wines, which we must*
 “ *favour preferably*; there will also result a
 “ pretty sensible expence for the establishing
 “ of a *Bureau d'Entrepot* in the port; but *the*
 “ *object* appears to me so interesting for the
 “ *population of the province, and the export of*
 “ *the produce of this kingdom, as well as of our*
 “ *islands* (West India islands), that I shall use
 “ every means in my power to remove all
 “ difficulties. I write thereupon in that mo-
 “ tive, on the one hand, to the Intendant of
 “ your province (Britany), to desire him to
 “ procure to these *new* inhabitants every pos-
 “ sible conveniency; and on the other, to the
 “ deputies of Commerce, to have their opinion
 “ upon the means of procuring to the port
 “ of Roscoff *the advantage of the Entrepot*.
 “ Mean time, until the decision of the ques-
 “ tion, you cannot too much encourage this
 “ *new* establishment, and I will not fail to
 F 2 “ represent

“ represent *your zeal* in the best manner in my power. I am very truly, &c. &c.”

There are some expressions in that letter which may want explanation. That the French ministers look upon the establishment at Roscoff as an important object, and to be encouraged, needs no illustration, other than that if it is so to France, the reverse must become an important object to England, and deserving a particular enquiry. The subject is indeed exceedingly interesting, and of national consequence; it is not only a positive but a negative national advantage to France, and proportionably prejudicial to Great Britain. I have before observed, and we all know that it is so, that we had above seventy privateers in the late war; but if we continue bereaved of our rights, it is easy to judge, from our already present distress and depopulation, that deprived of men and money, instead of our pouring out fleets of privateers against the French trade, Roscoff, that yet insignificant port will hereafter cover the seas with theirs.

The French ministers clearly see this double advantage arising from our depression. They hate us, and are well informed that in war
we

we are a constant thorn in their side, and the principal check to their coasting trade. No wonder, then, they are so warm and zealous for this establishment. The difficulties mentioned in that letter, about the preference to be given to their own brandies, must be interpreted to have reference to Spanish brandies. If Roscoff was made a free port, or *port d'entrepôt*, all spirits from any country would then be admitted there*; and 'tis this that the minister has there in contemplation. But then, adds he, "*the object appears to me so interesting for the population of the province, and the export of the produce of this kingdom, as well as of our islands, &c.*" Can these things be interesting objects to a French ministry, and not be so to an English government? Can we then be blamed, if we apply to get rescinded, regulations that (even setting aside our rights) avowedly tend to the populating an extensive province of France, and to the rendering these islands abject and desolate?

I am well aware of the objection that may be made us, That the more we magnify the advantages that arise to Roscoff, by shifting the trade there from these islands, the higher idea it must give in England of the extensive-

* Spanish Brandies are since freely admitted into Roscoff.

ness of that illicit branch here, previous to the late regulations. I should be sorry to deceive at any time, but truth should ever be sacred in the mouth of magistrates. The fact is, that the smuggling that was carried on from this island, compared to what is carried on from Dunkirk, is very inconsiderable. But if so inconsiderable, how then shall we account for the cried-up advantages arising to Roscoff, from the transition of that trade from us to them? I can give good reasons for this. You all know, that far from having any illicit trade carried on here in the article of wool, we do not so much as import two-thirds of the 2000 tods yearly allowed us from England; the smugglers brought none here, but they carry a great deal to Roscoff from Ireland and England. Add, then, to the encouragement of the export of the produce of France, and of its colonies, mentioned in the French minister's letter, the advantages resulting from the wool branch, and by their late regulations to their * Newfoundland fisheries, and you will easily comprehend why the establishment at Roscoff is an important and interesting object for the population of the province.

* See the French King's edict at the end of the Appendix, No. 1.

The Commissioners of the Customs, you see, judged then very right, in supposing that wool is carried from Great Britain and Ireland to foreign parts. But is it not equally evident, that as none was ever brought this way, that the present establishment, far from checking, encourages that pernicious trade? I moreover affirm to you, that I have been assured by a merchant of credit and reputation now in London, who passed through France in his way from Spain or Italy, that he was told by a French carrier, that he had alone this year got 30*l. sterling* for the carriage of guineas from Roscoff to Paris. Need these things better proof, than *the zeal* shewn by the French ministry, and their government, to promote that new settlement? You have heard their Chancellor's letter; and I can further attest from good authority, that the Duke de Duras, governor of Britany, has lately condescended to confer with some of the Roscoff merchants; and I have it from one of them, that he personally recommended to the Intendant of that province, and added, "Sir, " *you not only will have my protection, but that*
 " of

"of the king, and on any occasion you may write
 "to me at Paris *."

In former times, when any measures were to be taken by Government relative to these islands, royal Commissioners were sent here, who conferred with the Court about their expediency, or consistency with our privileges. It is much to be lamented that it is not so now, as we should then have had fair opportunities of explaining these matters, and setting them in a proper light. *James Major* could not in that case have imposed on Government. That the officers, and the regulations established by the order of the 13th of February, 1767, though equally exceptionable and subversive of our rights, were alone sufficient, and better adapted to answer the ends proposed, I not only will maintain but prove, if required. The addition of *Major* and his men, and which exposes the nation to about 2000l. yearly expence, is then an egregious surprize on Government, and an additional vexation to the people of this island.

* See the French King's edict at the end of the Appendix, No. 2.

This

This additional expence does not, I own, regard us ; but does it not behove us to undeceive their Lordships ? The complaints that *Major* has made of *cruel and unjust* treatment received here, in the execution of his office, certainly touches us, as it was undoubtedly meant as a reflection on our justice. But how can he have received *such treatment* in the execution of his office four or five months ago, *not being then* nor even yet in office ? Nevertheless this is made one of the motives of the order of the 13th of March last.—A very humiliating circumstance indeed, for a jurisdiction to be thus impeached and censured unheard !

It is really with concern I mention it, that things have not been ordered with that attention to our dignity that we had a right to expect, and his Majesty's service requires. The farther we are from the source of power and honour, the greater is the necessity of strengthening our hands by some degree of consideration. To us, by our constitution, is committed, under his Majesty's authority, the executive and political governance of this island, and we pass judgment in all causes civil and criminal ; so that if once we are sunk in the opinion of our inhabitants, we may bid

adieu to all subordination, and make way for confusion and anarchy. To see so mean, so obscure and wrongheaded a fellow as *Major*, who never had a command, have under him a schooner of fourteen guns, a cutter with four guns, four or five boats, and forty men armed, with very extensive powers, must not only be very alarming to the people of this island, but degrade all authority in the eyes of our common people.

But what must place us in a very contemptible light, is to see a set of pitiful Custom-house officers, with 40l. or 60l. yearly salary, set as a check over us and the governor. By the Act of the 3d of George I. certificates are to be given for goods of the produce or manufacture of these islands *by the Governors, and oath made before the Royal Court*. The Governors and this Court had discharged this trust with the greatest *care and fidelity*; but by the regulations and powers of the 13th of February, 1767, the Register, or other proper officer, is *to attest* the Governor's certificate, *and be present* at administering the oath, and *permitted and authorised to ask proper questions* of the persons taking such oath.

These

These things must certainly reflect not only on our station, but our personal dignity. We are born gentlemen, and of antient and even noble Norman families. Some of us can trace a regular descent from magistrates of above five hundred years. Some of them are in old deeds stiled Noble, and in others Honourable: the seals attached to those deeds have the arms of the family with supporters, and every ensign of nobility. Others among us, who have not chanced to preserve such testimonials, can trace as remote, and, I dare say, as honourable an ancestry. I mention this not from vanity, but that our personal dignity, properly represented, might not lessen with their Lordships that of our station. The act I have just mentioned does so much honour to our ancestors, that I beg your leave to read it. Act the 3d of George I. “ And whereas the inhabitants of the islands of Jersey, Guernsey, Serk, and Alderney, have always been permitted and allowed to import into England goods, wares, and merchandizes of the growth, produce, or manufactures of those respective isles, upon certificates from the respective governor, lieutenant, or deputy governor, commanders in chief for the time being, and oaths before the magistrates of the said islands of Jersey and Guernsey respectively,

“ tively, that the same were of the growth,
 “ produce, or manufactures of the said islands,
 “ or either of them, without paying any
 “ customs, subsidies, or duties for or in re-
 “ spect thereof: And whereas some doubt hath
 “ of late arisen, whether, according to some late
 “ laws now in force, this importation may be
 “ still continued: Now for removing the said
 “ doubt, and encouraging the said inhabitants
 “ to continue *that steady and firm loyalty and*
 “ *fidelity to the crown of Great Britain*, which
 “ they have formerly and constantly shown to
 “ *the crown of England*, and for their better
 “ support, be it declared and enacted, &c.”

This Act leads me also to mention again
 our charters, granted *with the assent and autho-*
riety of Parliament. I know not whether that
 circumstance has been attended to by their
 Lordships, or whether it will be esteemed ma-
 terial. I can only say, that the Council has
 always been *very tender* in such matters. This
 will appear by an order of Council I have here,
 viz. “ At the court at Hampton-Court the
 “ 1st day of July, 1731, upon reading this
 “ day at the Board a report from the right
 “ honourable the Lords of the Committee for
 “ the affairs of Guernsey and Jersey, dated
 “ the 16th of last month, in the words fol-
 lowing ;

“ lowing; viz. “ Your Majesty having been
 “ pleased, by your order in Council of the
 “ 9th of July, 1730, to refer unto this Com-
 “ mittee the humble petition of the States of
 “ your Majesty’s island of Guernsey, setting
 “ forth, that by an act passed in the second
 “ year of your Majesty’s reign, it is enacted,
 “ that some former acts made concerning the
 “ raising sixpence per month from all seamens
 “ wages, towards the support of Greenwich
 “ Hospital, should be extended to the ships
 “ and vessels belonging to any of the subjects
 “ of the said island of Guernsey, and that the
 “ said duty should be collected and levied in
 “ that island: That apprehending the col-
 “ lecting and levying the said duty within the
 “ said island *is contrary to the charters and pri-
 “ vileges* granted to the inhabitants by your
 “ Majesty’s royal progenitors; they therefore
 “ humbly prayed, that they might be heard
 “ in maintenance of their privileges, and that
 “ your Majesty will be pleased to grant them
 “ your royal protection, and such relief in the
 “ premises, as to your Majesty shall seem
 “ meet: The Lords of the Committee, in
 “ obedience to your Majesty’s said order of
 “ reference this day, took the said petition
 “ into consideration, and were attended by
 “ Counsel for the States of the said island of
 “ Guernsey,

“Guernsey, as also for the receivers of the
 “said duty. But it appearing on the face of
 “the said petition, to be a complaint *against*
 “*an act of parliament*, their Lordships did not
 “think proper to hear the Counsel on the
 “merits of the said petition, *being of opinion*
 “*that the same was not cognizable before your*
 “*Majesty in council* ; and therefore humbly
 “report to your Majesty, that the said peti-
 “tion ought to be rejected.”

Moreover, Gentlemen, the Lords of the
 Committee of Council, on a dispute between
 our Town and Country parishes, about the
 manner of rating and levying the public
 taxes, and a demand of the Town parish to
 give them twelve additional votes in the States,
 (neither of which were ever brought to a de-
 cision) gave also the following report, dated at
 the Council-Chamber, Whitehall, the 26th
 of April, 1759. “Their Lordships, upon
 “consideration thereof, are hereby pleased to
 “order, that *it be referred* to his Majesty’s
 “Attorney and Solicitor General, *to consider*
 “*whether his Majesty, by virtue of his prero-*
 “*gative, has power to alter* the number of the
 “constituent members of the assembly of the
 “States, and the proportion in which the se-
 “veral parishes of the island are represented.”

In

In Queen Elizabeth's time likewise, on a very solemn occasion, (the approving by her Majesty and Council the books of our laws compiled by the Governor and the Royal Court) their Lordships express themselves in this manner : " The Lords of the Queen's
 " most honourable Privy Council, after having
 " seen, heard, and considered the contents of
 " this book, signed by Sir Thomas Leighton,
 " Captain and Governor of the island of
 " Guernsey, and by the baillif and jurats of
 " the said isle, have ratified and aproved,
 " and do ratifie and approve the laws and
 " customs therein contained, to be practiced
 " and observed in the said isle of Guernsey,
 " saving always to her Majesty, and her heirs
 " and successors, the power to add thereto,
 " and correct the same, according to her
 " pleasure ; and also all prerogatives, proffits,
 " rights, and preheminances belonging to her
 " said Majesty, her heirs and successors, *with-*
 " *out prejudice nevertheless to the antient and*
 " *just priviledges* granted heretofore to the in-
 " habitants of the said isle. Done in her
 " Majesty's Privy-Council, the 27th day of
 " October, 1583."

These things, Gentlemen, I have thought myself obliged to lay before you, for your
 farther

farther information, and I trust they will have some weight with you. I would not thereby be thought an advocate for smuggling. That to defraud the king of his duties is a crime that ought to be checked, and laid under penalties, I readily admit; but where is it a crime, and where are the penalties to be laid? Undoubtedly where the crime is committed; where the legislature has a right to make the law, and inflict the penalties. But upon what grounds do we see ourselves here implicated in such transgressions, and the severest of penalties imposed on us, by the privation of our sacred rights and immunities? because, forsooth, we sell goods to smugglers? Have we a right to do it, or have we not? The legislature of Great Britain, who made the law, limited both the bounds of its extent and its penalties, and neither of them reach here. The Lords of the Treasury indeed (I speak it in all humility and reverence) have stretched out their arm beyond that, and have exerted their immediate influence to bring on us those severities.

I have said it before, and I repeat it again, that the motives for such measures may be plausible and popular, but establish no right. If there are mutual rights between the prince
and

and his people, they no doubt are to be held sacred. Upon these principles I would submit it to the consideration of the Lords of the Treasury themselves, whether they have a right to get extended to us acts of parliament, which the Parliament itself either thought it had no right, or did not think proper to extend to us. In the two instances I have mentioned, the Parliament has shewn the greatest delicacy and tenderness to the rights of the Isle of Mann, and of the heretable jurisdictions in Scotland; and can we, as I have observed before, expect less justice from his Majesty and his Council, upon a proper representation? Why indeed should arbitrary courses be taken with us more than with others? It is then these courses I oppose; it is our rights I defend. I pay no regard to smugglers; I do what the duke of Athol has done before me, and was found justifiable in doing. If the rights in Mann were vested in himself, are not the rights of Guernsey vested in the Bailiff and Jurats, and its other inhabitants? If he was to suffer in his revenues, do not our public revenues suffer a considerable diminution by the present system? Does it not greatly affect the property of many individuals? Does it not diminish or even destroy every one of our most unexcep-

H

tionable

tionable branches of trade ? and does it not produce all those evils I have before set forth ?

But, cruel reflection ! in all this the revenue of Great Britain will not be the least benefited. The trade will be shifted to Roscoff ; nay it is already there. They rise upon our ruin ; they lay the foundation to our overthrow. Their ministers see it, they are pleased with the prospect, and pursue it by every encouragement ; their caresses to the Roscoff merchants, their late edicts, the present prosperity of that port prove it irrefragably. And shall we, Gentlemen, without one effort more, concur in measures so destructive to us, and so beneficial to our inveterate enemies ? Surely the King's ministers will open their eyes ; surely they will investigate, they will deign to circumvent a French ministry ; they will attend to the rights of a people ; they will regard their prosperity, their safety, their constant loyalty, their past services, and their firm attachment to the British crown.

You all know my unshaken fidelity and loyalty to his Majesty, and my affection and firm attachment to his royal person, family, and government. If then I am against carrying these orders into execution, it is because

I have

I have taken an oath; it is because I am one of the constitutional guardians of the rights and liberties of this island; it is from motives of duty. If our constitution is to be broke, and our rights annihilated; the Royal Court should be first dissolved, and the magistrates discharged from their oath. The constitution being new framed, and a new oath administered, the new magistrates might then, with a safe conscience, act up thereto. But while I am bound by the oath of office I have taken, no perils shall ever be prevalent to induce me to break it. If then I disobey, it is from motives of conscience; it is with that religious awe and reverence that formerly animated the three Hebrews in Babylon. My opinion then is; neither to publish or register those orders, nor to swear the officers, but to make an humble representation to his Majesty on the different objects I have treated.

*

*

*

THE determination of the Court (being the Bailiff and ten Jurats present) was, by the casting vote only, for carrying the orders into

H 2

execution,

execution, with a reserve in their act, in the nature of a protest, as on the first orders. The Court was however unanimous, that those orders are subversive of the privileges and constitution of this island. But some thought this was an improper time for a petition to his Majesty. They were apprehensive that an humble application on the present crisis, tho' just, might be interpreted as an intention to join in the present commotions. Such a step, they feared, would impeach that unshaken fidelity, and affectionate attachment to his Majesty and government, that have always made the characteristic of the inhabitants of this island. Every one would have been ready to join in these sentiments; but by fatal experience it has been found, that the States, or the Court, have never yielded up any thing, in hopes of future redress, that has ever been rescinded. The whole Court are then animated with the same loyal and respectful sentiments to his Majesty and government. The motive for this publication is then in hopes that some worthy members of Government will read this, and get this matter investigated, that we may stand or fall by the merits of our cause.

A P P E N -

A P P E N D I X.

WHOEVER has been at the trouble of perusing the foregoing Discourse, must be convinced of the eagerness with which the French seize all occasions to profit from the errors of our Government, to the improving and extending of their own trade. It is indeed worthy observation, that no sooner were the Officers of the Customs fixed and established in Guernsey and Jersey, than the question about making Roscoff a free port, or *port d'entrepôt*, was discussed in the French councils, and as readily agreed to. This appears from the date of the establishment of those Officers in those islands, the dates of the *Intendant des Finances* the Sieur Trudaine's letter, and the King's edict, No. II. the officers having been established there in the year 1768; the Intendant's letter being of the 5th of March 1769; and the King's edict of the 3d of September following. This measure was indeed considered in France of too great a *national* importance to escape the patriotic zeal of their ministry. Roscoff is now, and has been ever since the forementioned edict a *port d'entrepôt*. The advantages resulting

ing to France thereby, are, it is hoped, fully set forth in the preceding Discourse; but as a year has elapsed since it was delivered, a recital of the following facts may not be deemed improper in this place: 1st, That very large quantities of *French rums* and *Spanish brandies* have within that space of time been imported to Roscoff, by the merchants of that port; which *rums* are distilled at Martinico and Guadaloupe, from large stills erected and left there by the English. 2dly, That not only the foregoing articles, but teas, &c. have been bought up at Roscoff by the Irish and English smugglers, and paid for in *wool* and *money* from Ireland, and new *guineas* from the West of England; thereby draining those countries of specie, the effects of which are avowedly felt by the merchants in those parts; the merchants at Roscoff insisting on wool or money for the goods they sell; whereas, when the smugglers came to those islands, they paid mostly in bills, or if in money it was returned to England, and not, as in the present case, sent to the Mint at Paris. 3dly, That the ready vent found at Roscoff for such large quantities of French rums having, from the best accounts *we have*, answered in its consequences the most sanguine *views* of the French ministry in the King's edict of the 3d of September, 1769; not only the French islands have

have received the greatest *benefit* by the barter of rum for dry cod-fish carried there in large cargoes, but the *Newfoundland ships* at Granville and St. Malo have considerably encreased.

But the chief motive of this Appendix being to point out another great advantage given the French, in preference to Guernsey, *in the article of wines*, we beg leave to proceed to that object. It is well known that all French wines, for the London and other British markets, are lodged at Bologne near the Downs, by and for account of the British merchants: The importance of that branch to the French, and particularly to Bologne, is amazing. In the first place, those wines being carried to that port from Bordeaux, and the Mediterranean ports, in *French vessels*, which carry back the produce and manufactures of Picardy, Normandy, &c. it encourages a considerable coasting-trade and navigation. 2dly, Those wines being kept at Bologne three or four years, till fit for use, they occupy large vaults and cellars at considerable *rents*, and occasion *other* great expences, to the advantage of the French coopers, draymen, labourers, &c. 3dly, The frequent voyages of the Bologne traders to London, occasioning the smuggling of large quantities of Burgundy and Champagne in bottles, as well as of much lace, lawn, cambrick,

cambrick, and other fine goods, the shops and French merchants receive great advantages thereby. Now as the vaults and cellars at Guernsey are as good as at Bologne, there is *no other* reason for giving this preference to a French port, but that it lays something more convenient to the London merchants. But surely so trifling an object ought to subside, when brought in competition with the more considerable one of *advantaging* the trade of subjects, and *distressing* that of our natural enemies. And what enemies? Enemies, who from their situation, similar to that of Dunkirk, *in war* are ever at hand with their privateers to distress the trade of those very merchants who *enrich* them in time of peace. An act of parliament, *ordering* all French wines, or all wines in general, (except Madeira wines) to be imported into Great Britain *directly* from the port of their first usual shipping, or the islands of Guernsey and Jersey, would soon throw this valuable branch into our hands, *check* the French coasting-trade, *suppress* one species of smuggling, and *ruin* Bologne. It is certain, the French would not scruple such a step in the like circumstances. We have seen their measures in regard to Roscoff, and we have another admirable instance of their industry and sagacity for the advancement of their trade, in an incident that happened in the year

1765.

1765. There are about 8000 tons of claret (so called) shipped yearly from Bordeaux to Ireland. In those clarets it is usual at Bordeaux to mix nearly one-fourth of Spanish wines. The wines will not do for the Irish market without this mixture. The parliament of Bordeaux, nevertheless, thinking such practice lessened in proportion the exports of their own wines, prohibited those mixtures under severe penalties. The consequence was, that both clarets and Spanish wines were brought to this island (Guernsey); the mixture was performed here, and we profited thereby above 3000*l*. But after this experiment, the parliament of Bordeaux seeing their cellars and warehouses empty, and their people unemployed, prudently rectified their error the very next year. It is however to be remarked, that they were not scrupulous in sacrificing the Spanish interest to their own; and is, it is conceived, what all wise nations should and ought to do. It is therefore hoped, that upon this principle the present state of this island may deserve some investigation and attention, both in respect to Roscoff, and the wines at Bologne.

No. I.

The 14th of March, 1768.

Extract from the Register of the Council of State,

IT having been represented to the King, being in his council, that nothing could prove more advantageous to the *French islands and colonies*, and at the same time tend more to the encouraging the fisheries of dry cod-fish on the coast of Newfoundland, than to grant to the merchants that would carry such cod-fish directly to the said *French isles and colonies*, the conveniency and permission of depositing, duty free, or by *entrepot*, in the ports of this kingdom, the rums which they may barter for or purchase with the produce of such cod-fish in the said islands : And his Majesty being desirous at all times to give signal marks of the protection which he is ever ready to grant to objects so interesting, hearing the report of the *Sieur De Laverdy*, counsellor in ordinary, and in the council royal, comptroller-general of the Finances : The King, being in his council, has ordered, and now orders, That all masters of French ships or vessels, who from the coasts of Newfoundland, St. Peter, and Miquelon, shall carry to the said isles and French colonies dry cod-fish of their own fishing, or who shall carry from France to the said islands entire cargoes of dry cod-fish of the French fishery, shall be permitted to load such rums in the said isles and colonies, and bring and deposit the same by *entrepot* in the ports of this kingdom, having the privilege of trading to the colonies ; which rums shall be exported to foreign markets within the year of their landing in the said privileged ports, free from all duties, except the demesne Western duty. And the masters of ships,

ships, who from the *ports* of France shall carry to the said isles or *French colonies* any small ventures or packages of such *cod-fish*, shall also have the liberty of employing the produce thereof in the said islands and colonies in the purchase of *rums*, and depositing the same in such *privileged ports*; which *rums* they shall export to foreign markets within a *year* of their deposit in the *ports* of their discharge. And such masters shall be obliged to prove and verify the exportation of such *rums*, within the year, upon pain of confiscation; and of five hundred livres penalty.

Done in the King's Council of State held at Versailles, his Majesty being there present, 14th of March, 1768.

Signed,

CHOISEUL DUC DE PRASLIN.

No. II.

The 3d of September, 1769.

Extract from the Register of the Council of State.

THE King having ordered the decree given in his Council the 14th of March, 1768, to be laid before him, by which his Majesty has permitted the depositing, duty free, or by *entrepot*, in the *ports* of this kingdom, that have the *privilege* of trading to the French islands and colonies of America, such *rums* as are the produce and returns of *dry cod-fish*, fished by the subjects, and carried to the said islands and colonies, on condition of exporting from the said *privileged ports* the said *rums* to foreign parts, within a *year* from the day of their landing, on pain of confiscation, and five hundred livres fine: And his Majesty being informed, that notwithstanding the *port* of *Roscoff* is not one of the *ports privileged* to trade to the said colonies,

60 A P P E N D I X.

colonies, that it nevertheless may have *conveniencies* for vending for foreign markets some of the said *rums*, in consideration of which it might be expedient to permit the depositing *therein*, duty free, or by *entrepot*, such *rums* as may be brought thither from the *ports* that trade to the said islands: His Majesty, willing to provide thereto, and seeing the memorial of the *Farmers General*, and the opinion of the *Intendant and Commissary* of the province of Britany, as well as that of the *Deputy of Commerce*; hearing also the report of the *Sieur Maynon d'Irvan*, Chancellor in ordinary, and Comptroller General of the Council Royal of Finances, the *King* being in his council. has ordered, and does hereby order, That all *rums* brought from the French islands and colonies of America, in return for *cod-fish*, fished by the subjects in the ports *licensed* to trade to the said islands, be *permitted* to be carried from the said *ports* to that of *Roscoff*, where they shall continue to enjoy the *privilege* of the *entrepot* for one year, reckoning from the day of their first landing by *entrepot*; within which said *year* they must be exported to *foreign parts* on pain of confiscation, and five hundred livres fine, and on condition of observing all the formalities prescribed by letters patent of the month of April, 1717, and other regulations concerning the *entrepots*.

Done in the King's Council of State held at Versailles the 3d of September, 1769, his Majesty being there present.



Signed,

CHOISEUL DUC DE PRASLIN.

F I N I S.

